

Attorney or Party Name, Address, Telephone & FAX Nos., State Bar No. & Email Address	FOR COURT USE ONLY
Thomas K. Schultheis Toni L. Schultheis 4455 Via Bendita Santa Barbara, CA 93110 805 967 3719	
<input checked="" type="checkbox"/> Individual appearing without attorney <input type="checkbox"/> Attorney for: Debtor(s)	
UNITED STATES BANKRUPTCY COURT CENTRAL DISTRICT OF CALIFORNIA - NORTHERN DIVISION	
In re: James Harry Salamon and Jeannie Fixler Salamon	CASE NO.: 8:12-bk-17145-ES CHAPTER: 11
	NOTICE OF MOTION FOR: Motion for Discharge, Final Decree and Closure of Chapter 11 Proceeding.
	(Specify name of Motion) DATE: 08/21/2014 TIME: 10:30 am COURTROOM: 5A PLACE: 411 W. Fourth St. Santa Ana, CA 92701
Debtor(s).	

1. TO (*specify name*): The Honorable Court, the United States Trustee and All Interested Parties
2. NOTICE IS HEREBY GIVEN that on the following date and time and in the indicated courtroom, Movant in the above-captioned matter will move this court for an Order granting the relief sought as set forth in the Motion and accompanying supporting documents served and filed herewith. Said Motion is based upon the grounds set forth in the attached Motion and accompanying documents.
3. **Your rights may be affected.** You should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.)

4. **Deadline for Opposition Papers:** This Motion is being heard on regular notice pursuant to LBR 9013-1. If you wish to oppose this Motion, you must file a written response with the court and serve a copy of it upon the Movant or Movant's attorney at the address set forth above no less than fourteen (14) days prior to the above hearing date. If you fail to file a written response to this Motion within such time period, the court may treat such failure as a waiver of your right to oppose the Motion and may grant the requested relief.
5. **Hearing Date Obtained Pursuant to Judge's Self-Calendaring Procedure:** The undersigned hereby verifies that the above hearing date and time were available for this type of Motion according to the judge's self-calendaring procedures.

Date: 07/29/2014

Totaro & Shanahan
Printed name of law firm

/s/ Michael R. Totaro
Signature

Michael R. Totaro
Printed name of attorney

1 **Michael R. Totaro 102229**
2 **Totaro & Shanahan**
3 **P.O. Box 789**
4 **Pacific Palisades, CA 90272**
5 **Telephone: 310 573 0276 (v)**
6 **Facsimile: 310 496 1260 (f)**

7 **Attorneys for Debtor/Debtor in Possession**

8 **UNITED STATES BANKRUPTCY COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA, SANTA ANA DIVISION**

10 **In re**

Case No. 8:12-bk17145-ES

11
12 **James Harry Salamon and**

Chapter 11

13 **Jeanne Fixler Salamon**

14
15 **Debtors.**

**MOTION FOR ENTRY OF A FINAL
DECREE, DISCHARGE PURSUANT TO 11
U.S.C. §1141(d)(5)(A), AND FOR ENTRY OF
AN ORDER CLOSING CASE; DECLARA-
TIONS AND EXHIBITS**

Date: August 21, 2014

Time: 10:30 a.m.

**Ctrm: 5A 411 W. Fourth St. Santa Ana,
CA**

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20 **TO THE HON. COURT, THE UNITED STATES TRUSTEE AND ALL**
21 **INTERESTED PARTIES:**

22 Debtors James Harry Salamon and Jeanne Fixler Salamon move this Court for
23 a Final Decree, Discharge and order Closing the Case (the “Motion”).

24 The Motion is made pursuant to 11 U.S.C. §§350(a), 1101(2), 1141(d)(5)(A)
25 and Federal Rules of Bankruptcy Procedure (“FRBP”) 3022 and on the grounds that
26 the estate has been “fully administered” justifying entry of a final decree and an
27 order closing the case and that “cause” exists for entry of an early discharge in this
28

1 case since debtors have paid all unsecured creditors under the plan and the only
2 remaining creditors are secured creditors with collateral for their claims.

3 The Motion is based on the notice, the attached Memorandum of Points and
4 Authorities, the Declarations and Exhibits attached and the records and files in this
5 case.

6 Dated: July 28, 2014

Totaro & Shanahan

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8 By /s/ Michael R. Totaro
9 Michael R. Totaro
10 Attorneys for Debtor
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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

This was an individual Chapter 11 case with multiple properties. The goal of the proceeding was to, sell some of the properties, alter the term of mortgage on the remaining properties, lower the interest rate where applicable and settle or dispose of ongoing litigation. All of the above goals have been met in the following manner:

1. The properties originally designated for sale have been sold.
2. The plaintiffs in the ongoing litigation have agreed to only seek recovery from the insurance companies with the amounts owed to be determined by state court proceedings.
3. The properties which were retained have had loans that have been modified by the confirmed plan, with only one objection.
4. An adversary proceeding by American Express has been settled and paid.
5. Funds held in escrow from a prior state court proceeding are being submitted to arbitration and have no effect on the estate.

Finally, the only outstanding issue is the amount of funds, if any, owed to the Chapter 7 trustee, Peter J. Mastan. Mr. Mastan has appealed this Court's order sustaining Debtor's objection to his claim and the trustee has taken that issue up on appeal.

CHRONOLOGY

This case was filed on June 8, 2012. The meeting of creditors and initial debtor interview was held on August 1, 2012. On May 27, 2014 this Court filed an order confirming the Chapter 11 plan. *See* Exhibit 1 attached hereto and incorporated herein by reference.

POST CONFIRMATION EVENTS

The only events taking place after confirmation was the litigation of the claim of Peter J. Mastan. On June 20, 2014 this Court signed an order granting Debtors' Motion to Disallow the claim. Other than this proceeding there have been no post-confirmation events other than Debtors' continuing to make payments on their mortgages. All of the unsecured debt has been fully paid. This motion is filed to obtain orders for Discharge, a Final Decree, and Close the case.¹

I. DEBTORS ARE ENTITLED TO A DISCHARGE FOR "CAUSE" UNDER 1141 U.S.C. §1141(D)(5)(A).

11 U.S.C. § 1141(d)(5)(A) states:

(d) In a case in which the debtors are an individual –

(A) **unless after notice and a hearing the court orders otherwise for cause**, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments. Emphasis added.

¹ As with other issues that arise in Chapter 11 cases there is a divergence of opinion on when an individual may obtain a discharge. Counsel has filed several other requests for final decree, closure and discharge, and the courts in this district have granted the requests. The following is only a sample. See *In re Afra*, 8:09-bk-14526-ES; *In re Andersen*, 2:11-bk-30466-VZ; *In re Beinbrink*, 8:11-bk-27169-CB; *In re Biundo*, 6:11-bk-29458-MJ; *In re Cobb*, 6:09-bk-25620-DS; *In re Eman*, 1:11-bk-12797-VK; *In re Gabrielson*, 6:12-15503-SC; *In re Haghighinia*, 8:09-bk-21400-CB; *In re Huber*, 8:10-bk-15375-TA; *In re Kearney*, 6:11-bk-21131-DS; *In re Lim*, 8:10-bk-24119-CB; *In re Ludena*, 8:09-bk-15866-CB; *In re Mehra*, 2:11-bk-18778-RK; *In re Mondala*, 6:10-bk49390-MJ; *In re Palafox*, 8:10-bk-15385-RK; *In re Pickard*, 8:10-bk-20943-ES; *In re Pierce*, 8:09-bk15260-ES; *In re Ridder*, 6:11-bk-26290-MJ; *In re Seddon*, 6:09-bk-36972-DS; *In re Simon*, 1:10-bk-14159-GM; *In re Simpson*, 8:10-bk-19745-TA; *In re Sims*, 8:10-bk-11286-ES; *In re Slatterly*, 6:09-bk-36545-MJ; *In re Smith*, 8:10-bk-22075-TA; *In re Totaro*, 1:11-bk-20073-MT; *In re Veskosi*, 1:09-bk-21368-GM; *In re Watts*, 2:11-bk34242-SK.

As a result, Debtor now moves this court for such an order.

1 Thus, the general rule provides for an individual to obtain a discharge when all plan
2 payments have been made. The Court however is left with the discretion under this section
3 to enter a discharge at a different time upon a noticed hearing and a showing of “cause.”

4 As often is the case with discretionary decisions, there is some disagreement as to
5 whether an individual may obtain an early discharge in a Chapter 11 proceeding. What is
6 really at issue is whether the court should retain jurisdiction to monitor the rights of the
7 unsecured creditors. As to the secured creditors one point to be noted is that if the debtor
8 fails to make the mortgage payments, this could negate any benefit from the confirmed plan
9 including, in this case, the immediate calling in of all of the mortgages that had matured
10 prior to filing. Therefore there is a strong incentive for the Debtors to keep current with
11 post-discharge payments on the secured debt.

12 As to the unsecured debt, in this case all of the claims have been paid in full. The
13 only possible outstanding claim would be for the Chapter 7 trustee, Peter J. Mastan. While
14 debtors have sufficient funds to cover this claim, it is Debtors’ counsel’s opinion the appeal
15 filed by the trustee is frivolous and in light of this Court’s ruling noting the trustee could
16 have made a credit bid on the foreclosed property and further noting the trustee did nothing
17 to set aside the sale of the foreclosed property once it had knowledge of the same.

18 Here, Debtors invoke the Court’s discretion to enter an early discharge on the
19 grounds that “cause” exists given that Debtors have paid all obligations to unsecured
20 creditors.

21 **A. THE MOTION WAS PROPERLY NOTICED**
22 **AND A HEARING IS BEING HELD.**

23 With the 2005 enactment of BAPCA the Legislature altered when an individual
24 debtors are entitled to receive a discharge in a chapter 11 case. Prior to 2005 all chapter 11
25 debtors could receive a discharge upon confirmation of their Plan. In interpreting the new
26 provisions pertaining to individual chapter 11 debtors, the Courts have considered that the
27 Code was changed to treat chapter 11 debtors similar to chapter 13 debtors. *In re Friedman*,
28 466 B.R. 471 (BAP 9th Cir. 2012); *In re Belcher*, 410 B.R. 206, 211 (Bankr.W.D.Va.

2009); *In re Shat*, 424 B.R. 854 (Bankr. D. Nev. 2010). However unlike a chapter 13 debtor, Section 1141(d)(5)(A) permits a chapter 11 individual debtor to obtain an earlier discharge for cause as long as there is notice and a hearing. In the context of an individual chapter 11 debtor, the statute contemplates a discharge which is keyed to completion of plan payments not simply confirmation. *In re Detweiler*, Case No. 09-63377 (Bankr. N.D. Ohio 2012).

The Courts that have considered whether there is cause for an earlier discharge have all required specific and conspicuous notice to creditors of the request. *See In re Sheridan*, 391 B.R. 287, 291 (Bankr. E.D.N.C. 2008); *In re Belcher*, 410 B.R. 206. Although some courts have indicated a request for an early discharge should be heard at the time of confirmation, *In re Necaize*, 443 B.R. 483 (Bankr. S.D. Miss, 2010) still others disagree indicating a separate motion is required. *In re Haines*, 2012 WL 1790219 (Bankr. N.D. Ohio 2012); *In re Sheridan*, 391 B.R. at 291.

Here, Debtors are serving this Motion specifying grounds under 11 U.S.C. §1141(d)(5)(A) and a Notice of the Hearing on all creditors such that this aspect of the requirements have been met.

B. DEBTORS HAVE ESTABLISHED “CAUSE” FOR AN ENTRY OF AN EARLY DISCHARGE.

In re Detweiler discussed the difference in the early discharge provisions under 1141(d)(5)(A) & (B), noting that a discharge under Subdivision (B), termed a “hardship discharge” is premised on situations where plan payments cannot be completed however “cause” under Subdivision (A) is premised on “completed” payments. *Id.*

“Cause” under subdivision (A) is not defined. *In re Draiman*, 450 B.R. 777, 823 (Bankr. N.D. Ill. 2011). It does appear that a finding of cause also requires a showing the debtors have substantial consummation of the Plan. *In re Beyer*, 433 B.R. 884, 888 (Bankr. M.D. Fla. 2009). Like most areas of law, “cause” is based on the facts and circumstances of the case. *In re Detweiler*. Some factors the courts consider are the likelihood that the debtor will make all of the payments under the plan and assurance, in the form of collateral, that

creditors will be paid the sum they have been promised even if the plan payments are not made. *In re Sheridan*, 391 B.R. at 290. In *Sheridan* the debtors plan provided a means of collateral for the unsecured debts and resulted in the Court granting a for “cause” discharge. *Id.*

Thus, the specifics of this case should be considered. Here Debtors have fully paid 100% of the allowed unsecured claims. The only claims not paid are the claims wherein the plaintiffs have agreed to proceed against the insurance carrier and the claim of Matsan which is on appeal. Debtors are current on the mortgage payment for the properties they have not sold. *See* Declaration of James Harry Salamon, attached hereto as Exhibit 2 and incorporated herein by reference.

A significant factor in the court permitting an early discharge for “cause” under subdivision (A) in *In re Sheridan*, 391 B.R. at 290-291 was the fact the unpaid creditors had a security interest in collateral to guarantee future payments. Here all of the remaining payments, including the arrearage payments are secured by the properties.

In *In re Draiman*, 450 B.R. 777, 823 (Bankr. N.D. Ill 2011) the court considered as relevant facts in determining cause for an early discharge, the likelihood debtor will make all plan payments, the existence of collateral assuring the creditors will be paid even if plan payments are not made, and whether the plan has been substantially consummated. These factors are essentially the same as considered in *In re Sheridan* with the addition of the substantially consummated factor. This additional factor is applicable to this case.

“Substantial consummation” is defined in 11 U.S.C. §1101(2) to mean:

(A) transfer of all or substantially all of the property proposed by the plan to be transferred:

(B) assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan;

(C) commencement of distribution under the plan.

1 In this case, there was no property to be transferred, however debtors have satisfied
2 the two remaining facets of the definition. Debtors have assumed management of all of the
3 property dealt with by the Plan and has not only begun making payments under the Plan
4 but has in fact paid all of the unsecured debt under the terms of the Plan. Thus, the Plan has
5 been substantially consummated.

6 Given the above, Debtors have satisfied all of the factors the courts have considered
7 in determining the existence of “cause” for the early entry of a chapter 11 discharge. Thus,
8 the Court should exercise its discretion and enter a discharge in this case under 11 U.S.C. §
9 1141(d)(5)(A).

10 **II. ENTRY OF A FINAL DECREE AND AN**
11 **ORDER CLOSING THE CASE IS**
12 **APPROPRIATE IN THIS CASE.**

13 **A. A FINAL DECREE MAY BE ENTERED SINCE**
14 **THE CASE IS FULLY ADMINISTERED**
15 **UNDER FRPB 3022.**

16 Entry of a Final Decree is provided for in FRBP 3022 which states “After an estate
17 is fully administered in a chapter 11 reorganization case, the court, on its own motion, or on
18 motion of a party in interest, shall enter a final decree closing the case.”

19 Neither the Bankruptcy Code nor the Federal Rules of bankruptcy Procedure define
20 what is meant by “fully administered,” however The Advisory Committee Note to Rule
21 3022 sets forth six factors to consider in determining whether a case has been “fully
22 administered.” These factors include:

- 23 1) whether the order confirming the plan has become final,
- 24 2) whether deposits required by the plan have been distributed,
- 25 3) whether the property proposed by the plan to be transferred has been transferred,
- 26 4) whether the debtor or the successor of the debtor under the plan has assumed the
27 business or the management of the property dealt with by the plan,
- 28 5) whether payments under the plan have commenced, and
- 6) whether all motion, contested matters, and adversary proceedings have been

1 finally resolved.

2 Although the above discussion is only advisory, courts frequently rely on these
3 factors in determining whether to enter a final decree and close a chapter 11 case. See, *In*
4 *re Union Home and Indus., Inc.* 375 B.R. 912, 917 (10th Cir, BAP 2007); *In re Necaize, Jr.*,
5 443 B.R. 483, 489 (Bankr. S.D. Miss. 2010).

6 These factors are essentially a slight expansion of the definition of substantial
7 consummation under 11 U.S.C. §1101(2) as numbers 3 through 5 of the factors are
8 virtually identical to the terms included in the definition. Since those factors have been
9 discussed *supra*, only the remaining three will be addressed at this time.

10 The order confirming the Plan in this case was entered on December 12, 2012 and is
11 clearly final. There were no deposits to be made under the Plan and all motions, contested
12 matters and adversary proceedings have been resolved. Advisory Committee Note, Factors
13 1, 2 & 6.

14 Here, the only action remaining for Debtors is to make Plan payments on the secured
15 debt. In *In re Johnson*, 402 B.R. 851, 856 (Bankr. N.D. Ind. 2009) the Court concluded that
16 even though the debtor had not completed all plan payments and was not eligible for a
17 discharge, this did not prevent the case from being “fully administrated.”

18 Indeed, the Advisory Committee Note also states:

19 The court should not keep the case open only because of the possibility
20 that the court’s jurisdiction may be invoked in the future. A final decree
21 closing the case after the estate is fully administered does not deprive
22 the court of jurisdiction to enforce or interpret its own orders and does
23 not prevent the court from reopening the case for cause pursuant to §
24 350(b) of the Code.

25 As set forth herein, Debtors have established the case is fully administered and the
26 Court should enter a final decree and close this case.
27
28

**B. THE PLAN PROVIDES DEBTORS MAY
FILE A REQUEST TO ENTER A FINAL
DECREE AND CLOSE THE CASE UPON
PROOF BY DEBTORS OF SUBSTANTIAL
CONSUMMATION AS DEFINED IN
BANKRUPTCY CODE SECTION 1101(2).**

As additional support for entry of a Final Decree, all creditors have previously been advised that a Final Decree might be filed. The Plan in this case specifically provides under Article VII, General Provisions, G. Provides that a final decree may not be entered until the case is fully administered. However that Section of the Plan, indicates the court may “allow a Final Decree at an earlier date if requested in Miscellaneous Provision (below) or for cause shown.” Exhibit 3, Plan, p. 8. The miscellaneous provisions are set forth in Article VII, General Provisions, H. Miscellaneous, which states: “The plan will be considered fully administered upon 60 months of payments, even if payments for the mortgages extend beyond that period or upon completion of all payments to the unsecured creditors whichever occurs first.” Exhibit 3, Plan, p. 8.

CONCLUSION

WHEREFORE Debtors pray that this Court grant the following relief:

1. Enter an order granting Debtors a discharge under 11 U.S.C. §1141(d)(5)(A) ;
- and
4. Enter an order of final decree closing the case under FRBP 3022.

Dated: July 28, 2014

Totaro & Shanahan

By /s/ Michael R. Totaro
Michael R. Totaro
Attorneys for Debtor

DECLARATION OF JAMES HARRY SALAMON

1. James Harry Salamon, declare:

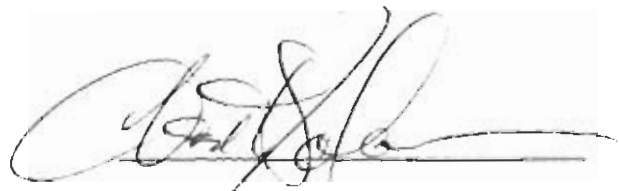
1. I am the debtor in the within matter. I have personal knowledge of the following facts and if called as a witness I could and would testify competently thereto.

2. This court previously signed an order permitting me to sell a group of the properties. As part of that sale, all of the unsecured debt was paid to the creditors. There is no unsecured debt left to be paid.

3. To my knowledge there are only four matters to be settled, three of them in state court. Two of the lawsuits involved tenant right's suits brought on behalf of alleged defects in one of the apartment buildings, which has now gone to foreclosure. The plaintiffs in those case have been permitted to proceed with their cause of action so long as they agreed to only go after insurance proceeds. A third matter involves an arbitration for the release of funds which have been held in escrow for over 5 years. Again this is a state court proceeding. Finally, the last matter is the appeal of the Chapter 7 trustee concerning this Court's ruling on June 27, 2014, granting Debtors' motion for an order disallowing claim. In all likelihood this matter will be pending for another year, but at the moment this Court's order is final.

4. I have reviewed this Motion and can attest to the information contained herein and to the extent it pertains to information pertinent to the case, the various plans and Disclosure Statements. By this declaration I am attesting to the information contained herein and am incorporating it herein by reference.

I declare under penalty of perjury the foregoing is true and correct. Executed on July 28, 2014 at Los Angeles, CA.



James Harry Salamon

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: P.O. Box 789, Pacific Palisades, CA 90272

A true and correct copy of the foregoing document entitled (*specify*): "MOTION FOR ENTRY OF A DISCHARGE PURSUANT TO 11 U.S.C. §1141(d)(5)(A); FOR ENTRY OF A FINAL DECREE AND ORDER CLOSING CASE" will be served or was served (**a**) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (**b**) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On *July 28, 2014*, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- **See attached**

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On July 29, 2014 I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Hon. Erithe A Smith, 411 W. Fourth St. Santa Ana, Ca 92701

James and Jeannie Salamon, P.O. Box 480762, Los Angeles, CA 90048

☒ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL

(*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _____ I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

7/29/2014

Michael R. Totaro

/s/ Michael R. Totaro

Date

Printed Name

Signature

1. By ECF:

- Steven L. Bergh sbergh@pnbd.com
- Aaron De Leest aed@dgdk.com, DanningGill@gmail.com
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- United States Trustee (SA) ustpreion16.sa.ecf@usdoj.gov
- Katherine S Walker bnc@amslca.com, vaguirre@amslca.com
- Michael M Wintringer mike@sgsslaw.com

Manual Service List

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EAST-WEST BANK
LOAN SERVICING-MORTGAGE DEPT.

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Chase Records Center
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700 Kansas Lane
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THE FAIR HOUSING COUNCIL OF SF
C/O MARGARET ELDER
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TOYOTA MOTOR CREDIT CORP
ASSET PROTECTION DEPT. WF21
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TORRANCE, CA 90509

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